

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

Docket No. R-34385, In Re: Amendment to General Order dated May 17, 2004 as it pertains to Household Goods Carrier's permanent establishment in Louisiana.

(Decided at the April 19, 2017 Business and Executive Session)

This General Order repeals and replaces in its entirety General Order dated May 17, 2004

I. Background

The Commission's General Order dated May 17, 2004 was issued in Docket R-27734 ("5-17-04 G.O.") to develop the rules and regulations necessary to implement procedures governing household good carriers, pursuant to Act 1262 ("Act"). Specifically, the 5-17-04 G.O. addressed what requirements a household goods carrier ("HGC" or "Carriers") must meet prior to being permitted to legally operate within the State of Louisiana.

The Commission acknowledged that the intent of the Act was to exempt household good carriers from the requirement of proving PC&N. The Commission also acknowledged that the intent of the Act was to nullify the exemption provided to household good carriers under La. R.S. 45:172(A)(4)(c) when transporting household goods, when the contract for moving household goods exceeds two hundred and fifty dollars. In acknowledging the Act, the Commission in no way relinquished any of its plenary constitutional authority to regulate motor carriers. The Commission issued the 5-17-04 G.O. to address its own concerns surrounding the permitting requirements of HGC.

II. Jurisdiction

Article IV, Section 21 (B) of the Louisiana State Constitution provides the following:

"The [public service] commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law."

The Louisiana Supreme Court has repeatedly held that the above-referenced provision gives the Commission exclusive, plenary power to regulate all common carriers and public utilities. Furthermore, acts or omissions of the Legislature cannot subtract from the Commission's power. *Global Tel Link, Inc. v. Louisiana Public Service Commission*, 97-0645, pp. 6-7 (La. 1/21/98), 707 So. 2d 28, 33; *Bowie v. Louisiana Public Service Commission*, 627 So. 2d 164 (La. 1993).

III. House Bill 128 of the 2017 Legislative Session

There is proposed legislation in the upcoming 2017 legislative session that is intended to amend and reenact La. R.S. 45:164(E)(2)(a) and (c) and (E)(3), relative to a carrier of household goods; to provide for regular business hours for a carrier's household goods business; to provide for cancellation of a household goods mover's certificate; to provide for promulgation of rules and regulations; and to provide for related matters.

Specifically, House Bill 128 ("HB 128") seeks to establish the requirement that a HGC's physical location shall be open for business and staffed during regular business hours by one or more persons employed by the carrier on a permanent basis for the purpose of general management of the household goods moving business.

The proposed legislation also clarifies that should a HGC cease to maintain a permanent establishment in the state, its right to conduct business shall be immediately suspended or may be cancelled at the discretion of the Commission. Specifically, the language proposed in HB 128 is as follows:

§164. Common carrier's certificate; contract carrier's permit

E.

(2)(a) Any carrier whether domiciled in or outside of Louisiana, who is providing the intrastate transportation of household goods in Louisiana shall maintain a permanent establishment in Louisiana. A permanent establishment shall mean a fixed place of business through which the business of the carrier is wholly or partly carried on. The place of business shall be a particular building or physical location used by the carrier for the conduct of its business, and it shall be foreseeable that the carrier's use of this building or other physical location shall be more than temporary. The physical location or place of business shall be open for business and shall be staffed during regular business hours by one or more persons employed by the carrier on a permanent basis for the purpose of general management of the household goods moving business. The permanent establishment may include a place of management, a branch, an office, or a terminal. The permanent establishment may be operated by either an employee of the carrier or an agent of the carrier provided that the agent has and habitually exercises the authority to conclude transportation contracts in the name of the carrier.

(c) Should the carrier cease to maintain a permanent establishment in the state, its right to conduct business in the state shall be immediately suspended or cancelled at the discretion of the Commission.

~~(3) The Louisiana Public Service Commission shall adopt and promulgate rules and regulations necessary to the proper implementation and administration of this Subsection, subject to the oversight of the standing committees on transportation, highways and public works of the Senate and the House of Representatives pursuant to the Administrative Procedure Act. The provisions of this Subsection shall apply only when the contract for moving household goods exceeds two hundred fifty dollars.~~

Section 2. This Act shall become effective on January 1, 2018.

The proposed legislation attempts to clarify the existing rules regarding permanent establishments; while the Commission believes the goals of the proposed legislation are consistent with its own concerns, the proposed legislation infringes upon the Commission's plenary constitutional authority to regulate motor carriers.

However, given that the proposed language in HB 128 is consistent with the Commission's concerns, the Commission, by way of this order adopts the following:

Section I-General Provisions:

1. Household Goods Carriers need not prove public convenience and necessity.
2. The provisions of this Order do not eliminate any other Commission requirements for Household Goods Carriers or motor carriers under other relevant Commission orders, rules, regulations or laws unless they conflict with this Order.
3. The provisions of this Order shall only apply when a contract or agreement for moving household goods exceeds \$250.00.
4. Any person found guilty of violating this Order shall be fined in accordance with the provisions of La. R.S. 45:171.
5. To the extent that the provisions in this Order conflict with any other Commission Order or Rule, this Order shall control.

Section II-Definitions:

1. **Commission:** Louisiana Public Service Commission.
2. **Household Goods Carrier:** A motor carrier that is transporting household goods for an amount greater than \$250.00.

3. **Motor Carrier:** Includes both a common carrier by motor vehicle and a contract carrier by motor vehicle, or any other classification of carriers created by law, operating for compensation or hire, including Household Good Carriers.

Section III-Requirements:

1. Any Household Goods Carrier that wishes to operate within the State of Louisiana must first apply for and secure a registration permit from the Commission. In order to secure a registration permit from the Commission, the applicant must perform the following:
 - a. File bodily injury/property damage insurance certificates on a uniform form as required by the Commission. Minimum limits for intrastate household good carriers are the following: public liability - \$250,000.00, 500,000.00 per occurrence and property damage of \$10,000.00. However, these limits may be amended by the Commission. Minimum limits for interstate household good carriers shall be determined by the Federal Motor Carrier Safety Administration.
 - b. Carry motor truck cargo carriers insurance of at least \$50,000.00 per truck and \$100,000.00 per catastrophe.
 - c. Secure and maintain workers' compensation insurance.
 - d. Secure a surety bond by a qualified surety company with the Commission in the amount of \$5,000.00 and file the same with the Commission.
 - e. Register the address and telephone number of its permanent establishment with the Secretary of State and the Public Service Commission. Proof of filing with the Secretary of State must be provided to the Commission. If a household goods carrier ceases to maintain a permanent establishment in the state, the right to conduct business will be suspended immediately or cancelled at the discretion of the Commission.
 - f. Have its physical location or place of business open and staffed during regular business hours. Such staffing shall be by one or more persons employed by the carrier on a permanent basis for the purpose of general management of the household goods moving business.
 - g. File an annual report on or before the 30th of April every year. Annual report filings shall be governed by the July 21, 1921 and April 19, 2001 General Orders, along with any other relevant Commission Orders, rules or regulations.
 - h. Be determined by the Commission to be a fit applicant. This determination will be made by the Commission Staff on a case-by-case basis. A written decision shall be sent to the applicant. Any decision made by the Commission Staff may be appealed and brought before a Commission Administrative Law Judge ("ALJ") for re-consideration. Any decision by an ALJ may be appealed to the Commission. Finally, any further appeal may be made pursuant to Article IV Louisiana State Constitution, Article IV, Section 21(E). The minimum requirements, although the Commission may make exceptions on a case by case basis, for a fit applicant are as follows:
 - i. No unpaid fines or fees imposed upon the Household Goods Carrier as a result of Commission Orders, rules or regulations.
 - ii. No current violations of Commission Orders, rules or regulations.
 - iii. No current violations of any other relevant State or Federal rules or regulations.
 - iv. Adequate financial, technical and managerial ability to perform and maintain operations within the State of Louisiana.
 - v. Other requirements which may be determined by the Commission on a case by case basis.
 - vi. Each applicant shall submit an affidavit certifying to the ownership of the applicant and agreeing to disclose in writing any change in ownership of the applicant and/or operator within 30 days of such change. An unfit applicant/operator shall include any entity applying for authority or operating under La. R.S. 45:164(e) which in the opinion of the Commission is subject to

the control of a previous operator who persistently failed to meet one or more of the minimum requirements of sub-section (g). Operator as used herein shall mean any person and/or entity who/which currently has or had authority pursuant to La. R.S. 45:164(e).

2. Once authority is granted under this Order, the authority may be revoked if a Household Goods Carrier does not continue to comply with any of the requirements found in this Order.

Commission Action:

This matter was brought before the Commission for consideration at the April 19, 2017 Business and Executive Session. On motion of Vice Chairman Skrmetta, seconded by Commissioner Boissiere, and unanimously adopted, the Commission voted to adopt Staff's proposed Draft Order filed April 6, 2017 to repeal and replace in its entirety the General Order dated 5-17-04.

IT IS THEREFORE ORDERED THAT:

1. The 5-17-04 GO is repealed and replaced in its entirety by the instant General Order; and
2. Existing Household Goods Carriers have until January 1, 2018 to come into compliance with this Order.
3. Any pending application with the Commission for a Household Goods permit may either amend its current application to come into compliance with this Order or may indicate its desire to come into compliance by January 1, 2018.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

May 4, 2017

/S/ SCOTT A. ANGELLE

DISTRICT II

CHAIRMAN SCOTT A. ANGELLE

/S/ ERIC F. SKRMETTA

DISTRICT I

COMMISSIONER ERIC F. SKRMETTA

/S/ FOSTER L. CAMPBELL

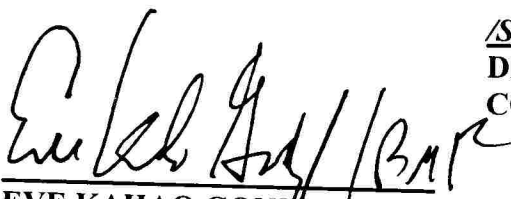
DISTRICT V

COMMISSIONER FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE

DISTRICT III

COMMISSIONER LAMBERT C. BOISSIERE, III


EVE KAHAO GONZALEZ
SECRETARY

/S/ MIKE FRANCIS

DISTRICT IV

COMMISSIONER MIKE FRANCIS